

Special Status of Delhi

Government of NCT of Delhi v. Union of India

Judges: Justice Dipak Misra, Justice D.Y. Chandrachud, Justice Arjan Kumar Sikri, Ashok Bhushan, Ajay Manikrao Khanwilkar

Case-Number- CA 2357/2017

Case Description:

The Court judged that the Chief Minister and not the Lieutenant Governor (LG) is the executive head of the National Capital Territory (NCT) government. Hence, the LG is bound by the aid and advice of the Council of Ministers on all matters where the Delhi Assembly has to the power to make laws.

Background:

On 4th July 2018, the five-judge Bench unanimously held that the Chief Minister is the executive head of the NCT:

- **CJI Misra's majority opinion**
- **Justice DY Chandrachud's concurring opinion**
- **Justice Ashok Bhushan's concurring opinion**

The tussle between the Chief Minister of Delhi, and Lt. Governor of Delhi eventually led to a legal controversy on the status of the NCT (National Capital Territory). The issue revolves around the administrative powers of the Lt. Governor of Delhi in light of the special status of Delhi as a Union Territory.

The issues raised in this case was previously heard by the Delhi High Court in 2015 because of a series of run-ins between Chief Minister Arvind Kejriwal and Ret'd Lt. Governor Najeeb Jung over matters such as the appointment of a Chief Secretary without consulting the Lt. Governor and the Chief Minister instituting corruption enquiries without the Lt. Governor's concurrence.

The confusion arose due to the special nature of Delhi which is a Union Territory with the features of a State, such as having an elected legislature. The 69th Amendment to the Constitution in 1992 added Article 239AA, which mandated an elected Assembly for Delhi. The special provisions added through the 69th Amendment created confusion with respect to the jurisdiction of the Delhi Government vis-a-vis the Centre.

The Delhi High Court in its judgment delivered on 4th August 2016 held that Delhi continues to be a Union Territory despite Article 239AA. It further held that the special provisions incorporated for Delhi do not overrule the effect of Article 239. Article 239 empowers the Lieutenant Governor to act independently of his Council of Ministers. As a result, all enquiries which were initiated by the Delhi Government without the concurrence of Lt. Governor were declared illegal, such as the enquiries into the issuance of CNG permit to vehicles, a financial enquiry into Delhi and District Cricket Association, among others. The concurrence of the Lt Governor became mandatory for all administrative decisions of Council of Ministers of Delhi.

The Delhi Government challenged this decision of the Delhi High Court before the Supreme Court. On February 2017, the two-judge Bench hearing the matter, referred it to a five-judge Constitution Bench.

On 4th July 2018, the Constitution Bench ruled that the Lt. Governor is bound by the aid and advice of the Council of Ministers.

Issues:

1. Should Delhi be treated like a Union Territory with the Lt. Governor as its administrative head or as a Special State where the Lt. Governor is bound by the advice of the Chief Minister?

Judgment:

The 5 judge bench comprising Chief Justice Dipak Misra, Justices DY Chandrachud, A.M. Khanwilkar, Ashok Bhushan and A.K. Sikri unanimously held that the Chief Minister and not the Lieutenant Governor (LG) is the executive head of the government. The judgment was delivered by CJI Dipak Misra speaking for himself and Justices A.K. Sikri and A.M.

Khanwilkar. Justices DY Chandrachud and Ashok Bhushan wrote two separate concurring opinions.

The Supreme Court's judgment focused on three key constitutional questions:

(1) Status of Delhi under the Constitution

All three opinions held that Delhi is not a State. They cited the 5 judge bench decision in *NDMC v State of Punjab* as a binding precedent.

CJI Misra held that though Delhi is not a State, it enjoys a sui-generis special status. He added that the LG is at best an administrator in a limited sense. CJI Misra did not view Delhi as a Union Territory where LG is the executive head.

Justice Chandrachud was more categorical in stating that the administration of Union Territory under Article 239(1) is different from Article 239AA which provides for an elected Legislature. Hence Delhi is not a Union Territory.

Justice Bhushan invoked Article 239(1) and held Delhi to be a Union Territory.

(2) Lt. Governor to act on 'aid and advice' of the Council of Ministers

The judgment held that the executive power of Delhi government is co-extensive with the legislative power of the Delhi Assembly. Thus, the LG is bound by the 'aid and advice' of the Council of Ministers on all matters where Delhi Assembly has the power to make laws.

CJI Dipak Misra cited principles of 'Collective Responsibility' and 'Co-Operative Federalism' to support his stance.

Justice DY Chandrachud held 'cabinet form of government' to be a basic feature of the Constitution.

In the case of Delhi, Justice Bhushan held that the LG is bound by the aid and advice of the Council of Ministers.

(3) Lt. Governor cannot refer 'every' matter to the President

The proviso to Article 239AA(4) allows the LG to reserve "any matter" for consideration of the President where the LG has a difference of opinion with the Council of Ministers. While holding that "any matter" could not mean "every matter", the judgment clarified that this

power can be exercised only in the exceptional situations where there is a genuine difference of opinion with the Council of Ministers.

Justice Chandrachud added that the LG can reserve matters pertaining to only “vital national interest”. This should be done as a last resort only after consultations with the concerned Minister and the Cabinet has not resolved the issue.